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Attorney for Defendant  
ADOLFO JONATHAN TORRES

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	Case No. 08cr0304-W
	)	
Plaintiff,	)	<b>STATEMENT OF FACTS</b>
	)	<b>AND</b>
v.	)	<b>POINTS AND AUTHORITIES</b>
	)	
ADOLFO JONATHAN TORRES,	)	Date: 4/1/08
	)	Time: 2:00 p.m.
Defendant.)	)	Court: Judge WHELAN
_____	)	

**STATEMENT OF FACTS**

This case is related to at least two other cases, specifically, United States of America v. Richard FIGUEROA-Moreno, Daniel FIGUEROA-Moreno, and Maria Eufelia CORONA-Cordova, 08cr0270-H, and United States of America v. Horaldo FLORES, 08cr0358-WQH.

On January 3, 2008 the government filed a complaint in this court charging Daniel FIGUEROA-Moreno, Ricardo FIGUEROA-Moreno,

1 and Maria Eufelia CORONA-Cordorva (08mj8001/08cr207-H) with  
2 possession of 3,833.39 pounds of marijuana with the intent to  
3 distribute. According to information available to counsel,  
4 Daniel FIGUEROA -Moreno tendered a guilty plea to Magistrate  
5 Judge Lewis on February 26, 2008 with sentencing scheduled for  
6 April 21, 2008 before Judge Huff. The plea agreement in that  
7 case provides for the dismissal of the cases against Tichard  
8 FIGUEROA-Moreno and Maria Eufelia CORONA-Cordova.  
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10  
11 On January 10, 2008 the government filed a complaint in  
12 this court against Adolfo Jonathan TORRES (the instant matter),  
13 alleging the possession with intent to distribute of 3, 833.79  
14 pounds of marijuana.

15  
16 On January 11, 2008 the government filed a complaint in  
17 this court (08mj8018/08cr358-WQH) alleging that Horaldo FLORES  
18 possessed with intent to distribute, 3,833.79 pounds of  
19 marijuana.

20 It is apparent that all three cases involve the same  
21 marijuana and the same persons.  
22

#### 23 POINTS AND AUTHORITIES

24  
25 1. **STATEMENT OF DEFFENDANT.** Pursuant to *Federal Rule of*  
26 *Criminal Procedure 16(a)(1)(A)and (B), Brady v. Maryland, 373*  
27 *U.S. 383 (1963) and the Fifth and Sixth Amendments to the United*  
28 *States Constitution*, defendant requests diclosure of any

1 statements, whether oral, written, or recorded made by him which  
2 are in the possession, custody, or control of the government, or  
3 which by the exercise of due diligence may become known to the  
4 government, regardless of to whom made. A defendant has the  
5 right to inspect any copy written or recorded statements made by  
6 him to government agents or within the custody or control of the  
7 government. This rule has been extended to permit discovery or  
8 a written summary of the defendant's oral statement contained  
9 the handwritten notes of the government agent. *United States v.*  
10 *Johnson*, 525 F.2d 999 (2<sup>nd</sup> Cir. 1975); *United States v. Pilnick*,  
11 267 F. Supp. 791 (S.D.N.Y. 1976; *Loux v. United States*, 389 F.2d  
12 911 (9<sup>th</sup> Cir. 1968).

15 2. **DEFENDANT'S CRIMINAL RECORD.** Pursuant to *Federal Rule*  
16 *of Criminal Procedure 16(a)(1)(D)*, defendant requests disclosure  
17 of his criminal record.

19 3. **DOCUMENTS, TANGIBLE OBJECT, REPORTS.** Pursuant to  
20 *Federal Rule of Criminal Procedure 16(a)(1)(E)* defendant  
21 requests the opportunity to inspect and copy or photograph all  
22 books, papers, documents, data, photographs, and tangible  
23 objects buildings or places which are enumerated in subsections  
24 (i), (ii) and (iii).

26 4. **REPORTS OF EXAMINATIONS AND TESTS.** Defendant also  
27 requests any and all results and reports of scientific tests or  
28

1 experiments conducted by the government pursuant to *Federal Rule*  
2 *of Criminal Procedure 16(a)(1)(F)*.

3       5.     **EXPERT WITNESSES.** Pursuant to *Federal Rule of*  
4 *Criminal Procedure 16(a)(1)(G)* defendant requests disclosure of  
5 a written summary of testimony the government intends to use  
6 under *Federal Rules of Evidence 702, 703, or 705*.

7  
8       6.     **NOTICE OF GOVERNMENT'S INTENT TO USE EVIDENCE.**  
9 *Federal Rule of Criminal Procedure 12(b)(4) (B)* provides in  
10 pertinent part:  
11

12  
13             "At the arraignment or as soon thereafter  
14 as practicable the defendant may, in order  
15 to have an opportunity to move to suppress  
16 under Rule 12 (b)(3)(C), request  
17 notice of the government's intention to use  
18 (in its evidence-in-chief at trial) any evidence  
19 which the defendant may be entitled to discover  
20 under Rule 16."

21  
22             The purpose of this rule is to avoid needless motions  
23 by the defense to suppress evidence that is not going to be used  
24 at trial. The Rule places a burden on the government to review  
25 its case and let the defendant know what evidence the government  
26 is going to use. In this way, the Rule seeks to "eliminate from  
27 the trial disputes over police conduct not immediately relevant  
28

1 to the question of guilt." *Jones v. United States*, 362 U.S.  
2 257, 264 (1960).

3       7.     **RULE 404(b) EVIDENCE.** Defendant requests the  
4 government be ordered to provide discovery and reasonable notice  
5 of evidence of other crimes, wrongs, or acts of the defendant  
6 that the government contends may be proof of motive,  
7 opportunity, intent, preparation, plan, knowledge, identity, or  
8 absence of mistake or accident. Defendant must have access to  
9 such evidence in order to be able to make a timely motion to  
10 exclude it at trial and for the purposes of the "balancing"  
11 required by *Rule 403*. See *United States v. Cook*, 609 F.2d 1174  
12 (9<sup>th</sup> Cir. 1985).

15       8.     **RULE 609 EVIDENCE.** Defendant requests that the  
16 government produce all evidence of prior convictions of the  
17 defendant that the government intends to introduce at trial, for  
18 impeachment purposes, in the event the defendant testifies.  
19 Pretrial production of such convictions is necessary in order  
20 that the defendant may determine whether such convictions are  
21 admissible under *Rules 403 and 609*. The defendant further  
22 requests that the government supply the defendant with the  
23 notice required by *Rule 609(b)* relative to convictions in excess  
24 of 10 years old which the government intends to use for  
25 impeachment at trial.  
26  
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1           9.     **PRESERVATION OF AGENTS' ROUGH NOTES.** Defendant  
2 requests an order that the rough notes of agents be ordered  
3 preserved at this time so that appropriate motions may be  
4 brought in the future of their production. *United States v.*  
5 *Harris*, 543 F.2d 1247 (9<sup>th</sup> Cir. 1976).  
6

7           10.   **TIMETABLE FOR DISCLOSURE OF JENCKS MATERIAL.**  
8 Defendant requests that the court establish a timetable for  
9 disclosure of *Jencks* material pre-trial to avoid unnecessary  
10 delay during the trial for investigation and in order that  
11 counsel may prepare for cross-examination.  
12

13           11.   **CONFIDENTIAL INFORMANT DISCLOSURE.** Defendant requests  
14 disclosure of confidential informants who were involved in the  
15 offense (*Sorrentino v. United States*, 163 F.2d 627 (9<sup>th</sup> Cir.  
16 1947; *Williams v. United States*, 374 F.2d 821 (9<sup>th</sup> Cir. 1968),  
17 *McLawhorn v. State of North Carolina*, 484 F.2d 1 (4<sup>th</sup> Cir. 1973),  
18 where the informant was a witness to the offense (*Gilmore v.*  
19 *United States*, 256 F.2d 565 (5<sup>th</sup> Cir. 1958), where there  
20 disclosure of the informant is relevant and helpful to the  
21 defense (*Rovario v. United States*, 353 U.S. 53 (1957), *United*  
22 *States v. Lloyd*, 400 F.2d 414 (6<sup>th</sup> Cir. 1968).  
23  
24

25           12.   **CO-CONSPIRATOR STATEMENTS.** Defendant requests  
26 disclosure of co-conspirator statements which the government  
27 intends to introduce at trial since such statements will be  
28 attributed to defendant under *Rule of Evidence 801(d)(2)(E)*.

1 Such statements may be exculpatory and discoverable under *Brady*,  
2 *infra*.

3       It appears that numerous persons were involved in the  
4 alleged offense(s). Such persons are therefore co-conspirators  
5 but in this case the government has elected to charge them  
6 separately.  
7

8  
9       The Statement of Facts in support of the complaint filed in  
10 08mj8001/08cr270-H against Daniel FIGUEROA-Moreno, Ricardo  
11 FIGUEROA-Moreno and Maria Eufelia CORONA-Cordova states that  
12 Ricardo FIGUEROA and Maria CORONA were arrested the a residence  
13 where the 3,833.79 pounds of marijuana was found, that they knew  
14 about the marijuana. A pair of women's underwear was located  
15 underneath one of the bundles of marijuana. CORONA said that  
16 she and Richard FIGUEROA were instructed to let two other  
17 persons into the residence when they arrived.  
18  
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20       The Statement of Facts in support of the complaint filed in  
21 08mj8018/08cr358-WQH against Horaldo FLORES states that the  
22 agents discovered 25 bundles of marijuana in the room containing  
23 the personal property of FLORES.  
24

25       The Statement of Facts in support of the compliant filed in  
26 08mj8012/08cr0304-W it is stated that 25 bundles of marijuana  
27 were found in the bedroom containing the personal property of  
28 Adolfo Jonathan TORRES.

1 It is requested that the court order the government to  
2 produce the following documents:

- 3 a. All discovery in the each of the above cited cases;  
4  
5 b. All Presentence reports in each of the above cited  
6 cases;  
7  
8 c. All Brady material in connection with the above cited  
9 cases;  
10  
11 d. Statements of all defendants in the above cited cases.

12 13. **CO-DEFENDANT'S STATEMENTS.** Defendant requests  
13 disclosure of statements of co-defendants as such statements may  
14 exculpate the defendant and should therefore be disclosed under  
15 *Brady*, infra. In addition, disclosure is necessary so that  
16 defendant can examine said statements to determine, pursuant to  
17 *Bruton v. United States*, 391 U.S. 123 (1968), whether the  
18 statements implicate the defendant and should be redacted or  
19 whether severance should be sought.

20 Defendant requests production of the documents referred to  
21 in paragraph 12 above.

22 14. **GOVERNMENT AGREEMENTS WITH WITNESSES.** Defendant  
23 requests disclosure of all agreements between the government and  
24 prosecution witnesses which may tend to show bias or motive not  
25 to tell the truth.  
26

27 15. **BRADY AND GIGLIO MATERIAL.** Pursuant to *Brady v.*  
28 *Maryland*, 373 U.S. 383 (1963), *United States v. Agurs*, 42 U.S.



1 97 (1976), and *Giglio v. United States*, 405 U.S. 150 (1972),  
2 defendant requests that the court order the government to  
3 disclose all evidence in its possession favorable to him on the  
4 issue of guilt, or evidence which tends to effect the  
5 credibility of the prosecution's case  
6

7 16. **GOVERNMENT REVIEW OF LAW ENFORCEMENT PERSONNEL**  
8 **FILES.**

9 The defendant requests that the government examine the personnel  
10 files and any other files within its custody, care or control,  
11 or which could be obtained by the government, for all testifying  
12 witnesses, including testifying officers and agents who may have  
13 been controlling or contacting any confidential informant who  
14 may be involved in this case. The defendant requests that these  
15 files be reviewed by the government attorney for evidence of  
16 perjurious conduct or other like dishonesty, or any other  
17 material relevant to impeachment, or any information that is  
18 exculpatory, pursuant to its duty under *U.S. v. Henthorn*, 931  
19 F.2d 29 (9<sup>th</sup> Cir. 1991). See *U.S. v. Jennings*, 960 F.2d 1488,  
20 1492 (9<sup>th</sup> Cir. 1992).  
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24 Dated: March 17, 2008

25 Respectfully submitted,

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